FOONG SEONG EQUIPMENT SDN BHD A

v.

KERIS PROPERTIES (PK) SDN BHD

HIGH COURT MALAYA, IPOH B
BALIA YUSOF WAHI J
[ORIGINATING SUMMONS NO: MT3 24-2163-2004]
4 OCTOBER 2007

CONTRACTS: *Joint venture agreement - Application for declaration - Construction of agreement - Plaintiff's entitlement to receive gross sale proceed and any other income derived from development scheme - Whether subject to Act and Regulations - Whether plaintiff entitled to reliefs - Housing Developers (Control and Licensing) Act 1966, ss. 7A(1) and 7A(5) - Housing Development (Housing Development Account) Regulations 1991, reg. 7* C D

This was an application for a declaration in respect of a joint venture agreement entered into between four parties namely, the plaintiff, the defendant, U-Meng Corporation Sdn Bhd and U-Meng Holdings Sdn Bhd. The declaration sought by the plaintiff revolved essentially on the construction of cl. 2 of the said joint venture agreement with regard to the entitlement of the parties under the said agreement. As a background to the plaintiff's claim, a joint venture agreement was entered into between the plaintiff and the three parties mentioned above. The plaintiff and one U-Meng Corporation Sdn Bhd and another entity U-Meng Holdings owned certain pieces of land and together they entered into a joint venture agreement with the defendant to develop their lands (the three referred to as landowners in the agreement). Under the said venture agreement, the landowners had agreed with the defendant to a certain formula and ratio as to their entitlement in respect of the development to be carried out by the defendant as developer. The development to be carried out on the said lands included both for residential as well as other commercial and industrial purposes. The main feature of the agreement was that the landowners would agree to a predetermined entitlement ratio on all gross sale proceeds and any other income derived from the development of the said land. Briefly, the entitlement of the plaintiff under the said agreement was (a) the plaintiff was entitled E F G H I

to receive gross sale proceed and any other income derived from the said development scheme; (b) the defendant undertake to pay the plaintiff's entitlement supported by a statement of the sales and receipts within seven days of receipt of payment by the defendant in respect of monies received under the Housing Development Account, (c) the defendant undertake to pay the plaintiff's entitlement in cash upon receipt of payment from purchasers on a monthly basis. The plaintiff was in liquidation and receivers and managers had been appointed pursuant to a court order to run the affairs of the company in the terms as stipulated in the order. In accordance with their powers and duties, the receivers and managers have carried out necessary enquiries and investigations into the affairs of the plaintiff company and have found that proceeds from the development scheme were due and owing to the plaintiff company in accordance with the joint venture agreement. The plaintiff claimed it had received RM2,421,681.63 from the defendant for the period of May 2003 until September 2003 and had not received any entitlement since October the same year. Despite numerous requests, the defendant had failed/refused to accede to the plaintiff's request, thus prompting the receivers and managers to file the present application in court.

Held:

(1) The plaintiff herein was a party to the joint venture agreement thus it could not be disputed that the plaintiff had an interest in the subject matter. The plaintiff who was under receivership was no less entitled to seek for the declaratory relief. The receivers and managers were court appointed and as receivers and managers they were empowered to take possession of, collect and get the whole or any part of the property of the plaintiff. The proceeds from the development scheme under the joint venture agreement formed part of the property of the plaintiff. Those proceeds were due and owing to the plaintiff. (paras 10 & 17)

(2) Construing the provisions of cls. 2.1A(b) (ii) and B (b) (ii) of the joint venture agreement, the plaintiff was entitled to receive from the defendant all gross sale proceeds and any other income from both the residential development as well as the non-residential development. The words in those two

clauses were plain and simple and need no further explanation or elaboration. The court must give effect to the plain meaning of the words. Accordingly the court declared that the plaintiff was entitled in the ratios and/or percentages of all the gross sale proceeds and any other income derived from the development scheme as stated in cls. 2.1A(b)(ii) and B(b)(ii) of the joint venture agreement. (paras 18 & 19)

(3) Taking into account s. 7A(1) and 7A(5) of the Housing Developers (Control and Licensing) Act 1966, reg. 7 of the Housing Development (Housing Development Account) Regulations 1991, it was clearly envisaged by the parties that whatever payments due to the plaintiff as landowner arising from the sale proceeds and any other income derived from the development was subject to the restrictions under the Act and the Regulations. Therefore, the plaintiff's entitlement to the payment could only be paid from the sale proceeds of any source or account other than the proceeds from the residential development. To hold otherwise would mean that not only the provisions of cl. 13 of the joint venture agreement was flouted but it would also mean a transgression of the statutory provisions in the Act and the Regulations. Clause 2.3.1 must be interpreted to be subject to cl. 13 of the joint venture agreement for it to have any effect. (para 22)

(4) As claimed by the plaintiff, a total amount of RM2,421,681.63 had been received between the months of May and September 2003. These payments were in respect of the joint venture agreement. The defendant was estopped from denying that the plaintiff had in fact been paid its entitlement under the joint venture agreement. (para 24)

(5) Besides seeking a declaratory relief on its entitlement under the joint venture agreement, the plaintiff was also seeking other consequential reliefs as prayed in prayers (2), (3), (4), (5) and (6) of encl. 1. These consequential reliefs merely detailed out the obligations of the defendant under the joint venture agreement requiring the defendant to comply with the provisions of the agreement relating to the entitlement of the plaintiff towards the supply of account of payments made to the plaintiff, statement of the sales and receipts and also the

payment of all monies due to the plaintiff from the sale proceeds and any other income derived from the development scheme. The plaintiff was entitled to all these consequential reliefs. (para 25)

[Order accordingly.]

Case(s) referred to:

Barnard v. National Dock Labour Board [1953] 2 QB 18 ***(refd)***

Boustead Trading (1985) Sdn Bhd v. Arab Malaysian Merchant Bank Bhd [1995] 4 CLJ 283 FC ***(refd)***

Chamber Colliery Ltd v. Twyrerould [1893] [1915] 1 Ch 268 ***(refd)***

City Investment Sdn Bhd v. Koperasi Serbaguna Cuepacs Tanggungan Bhd [1985] 1 CLJ 131; [1985] CLJ (Rep) 77 FC ***(refd)***

Cox v. Green [1966] 1 Ch 216 ***(refd)***

Dawsons Bank v. Nippon Menkwa Kabushiki Kaisha LR 62 1A 100 ***(refd)***

Hotel Anika Sdn Bhd v. Majlis Daerah Kluang Utara [2006] 1 LNS 130 ***(refd)***

Ikebife Ibeneweka & Ors v. Egbuna Peter & Anor [1964] 1 MR 219 ***(refd)***

Karpal Singh v. Sultan of Selangor [1987] 2 CLJ 342; [1987] CLJ (Rep) 686 HC ***(refd)***

Keng Soon Finance Bhd v. MK Retnam Holdings Sdn Bhd [1996] 4 CLJ 52 HC ***(refd)***

Lim Cho Hock v. Government of the State of Perak & Ors [1980] 2 MLJ 149 ***(refd)***

Mellstrom v. Gamer & Ors) [1970] 2 All ER 9 ***(refd)***

Re Strand Music Hall Co Ltd [1865] 35 Beav 153 ***(refd)***

Singma Sawmill Co Sdn Bhd v. Asia Holdings Sdn Bhd [1980] 1 MLJ 21 ***(refd)***

Tan Sri Hj Othman Saat v. Mohamad Ismail [1982] 2 MLJ 177 ***(refd)***

Tengku Mariam Tengku Sri Wa Raja & Anor v. Commissioner for Religious Affairs Terengganu & Ors [1969] 1 MLJ 110 ***(refd)***

The Royal Selangor Golf Club v. Anglo-Oriental (Malaya) Sdn Bhd [1990] 1 CLJ 995; [1990] 3 CLJ (Rep) 37 HC ***(refd)***

The Russian Commercial & Industrial Bank v. British Bank for Foreign Trade [1921] 2 AC 438 ***(refd)***

Walter Pathrose Gomez & Ors v. Sentral Raya Sdn Bhd [2007] 3 CLJ 176 HC ***(refd)***

Legislation referred to:

Contracts Act 1950, s. 24

Housing Developers (Control and Licensing) Act 1966, s. 7A(1), (5)

Housing Development (Housing Development Account) Regulations 1991, reg. 7

Rules of the High Court 1980, O. 15 r. 16

Rules of the Supreme Court 1957, O. 15 r. 17, O. 25 r. 5

Specific Relief Act 1950, s. 41

For the plaintiff - P Gananathan (Olivia Loh & Ng Hooi Shan with him); M/s Bodipalar Ponnudurai Nathan
For the defendant - Thomas Sue (Leong Sai Wah with him); M/s CK Leong & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Balia Yusof Wahi J:

[1] This is an application for a declaration in respect of a joint venture agreement entered into between four parties namely, the plaintiff, the defendant, U-Meng Corporation Sdn. Bhd. and U-Meng Holdings Sdn. Bhd. The declaration sought by the plaintiff revolves essentially on the construction of cl. 2 of the said joint venture agreement with regard to the entitlement of the parties under the said agreement. For completeness and ease of reference, I tabulate the plaintiff's claims in encl. 1 as follows:

(1) a declaration that pursuant to cl. 2.1 of the agreement dated 4 May 1996 ("Joint Venture Agreement") between the plaintiff, the defendant, U-Meng Corporation Sdn. Bhd ("U-Meng Corporation") and U-Meng Holdings Sdn. Bhd ("U-Meng Holdings"),

the plaintiff is entitled to receive from the defendant all gross sale proceeds and any other income derived from the development scheme under the Joint Venture Agreement ("Development Scheme") in the following ratio:

(i) in respect of wholly residential development, in the proportion of 11.8958%; and

(ii) in respect of all other types of development but not limited to commercial, industrial and partly residential development, in the proportion of 13.3233%;

(2) an order for an account of payments made in the past to the plaintiff or to such parties on behalf of the plaintiff under the joint venture agreement supported by a statement of sales and receipts to be provided by the defendant to the plaintiff within seven (7) days from the date of this order being granted;

A (3) an order for an account of payments payable to the plaintiff under the joint venture agreement together with a statement of the sales and receipts as at the date of this order to be provided by the defendant to the plaintiff within seven (7) days from the date of this order being granted;

B (4) an order that the defendant to pay to the plaintiff all monies found due upon taking such account pursuant to paragraphs (2) and (3) hereinabove within fourteen (14) days from the date of the account being obtained;

C (5) an order directing the defendant to pay and continue to pay to the plaintiff all gross sale proceeds and any other income derived from the Development Scheme in the ratio set out in paragraph (1) hereinabove supported by a statement of the sales and receipts in accordance with and in the manner set D out in the joint venture agreement;

(6) an order that the defendant be directed to comply with cl. 18.2 of the joint venture agreement thereby entitling the plaintiff to inspect the account books and supporting E documents thereof of the defendant in so far as the same relates to the sales, sale proceeds and other receipts and income in respect of the Development Scheme and to take copies thereof;

F (7) interest thereon at 8% per annum on all monies found due to the plaintiff upon taking such account from the date such monies became due and payable until full realization thereof;

(8) costs of and occasioned by the application herein be borne by the defendant; G

(9) such further and other orders made or given as this Honourable Court deems fit and proper in all circumstances of the case.

H **Background**

[2] As a background to the plaintiff's claim, a joint venture agreement dated 4 May 1996 was entered into between the plaintiff and the three other parties mentioned above. The plaintiff and one U-Meng Corporation Sdn. Bhd and another entity U- I Meng Holdings Sdn. Bhd own certain pieces of land and together

they entered into a joint venture agreement with the defendant to develop their lands. The three are referred to as the landowners in the agreement. Under the said joint venture agreement, the landowners has agreed with the defendant to a certain formula and ratio as to their entitlement in respect of the development to be carried out by the defendant as developer. The development to be carried out on the said lands include both for residential as well as other commercial and industrial purposes. The main feature of the agreement is that the landowners would agree to a predetermined entitlement ratio on all gross sale proceeds and any other income derived from the development of the said land. Briefly, the entitlement of the plaintiff under the said agreement are as follows:

(a) the plaintiff is entitled to receive gross sale proceed and any other income derived from the said development scheme in the ratio of 11.8958% for residential development and 13.3233% for other types of development including but not limited to commercial, industrial and partly residential development. (Clause 2.1 of the joint venture agreement).

(b) the defendant undertakes to pay the plaintiff's entitlement supported by a statement of the sales and receipts within seven days of receipt of payment by the defendant in respect of monies received under the Housing Development Account (Clause 2.3.1).

(c) the defendant undertakes to pay the plaintiff's entitlement in cash upon receipt of payment from purchasers on a monthly basis on or before the 10th day of the following month supported by a statement of the sales and receipts for that month in respect of development not falling within the Housing Development Account (Clause 2.3.2),

[3] The plaintiff company is in liquidation and Receivers and Managers has been appointed pursuant to a court order to run the affairs of the company in the terms as stipulated in the order. In accordance with their powers and duties, the Receivers and Managers have carried out necessary enquiries and investigations into the affairs of the plaintiff company and have found that proceeds from the development scheme are due and owing to the plaintiff company in accordance with the joint venture agreement.

A The plaintiff claims that it has received RM2,421,681.63 from the defendant for the period of May 2003 until September 2003 and has not received any entitlement since October the same year. Despite numerous requests, the defendant has failed and/or refused to accede to the plaintiff's request, thus prompting the Receivers B and Managers filing the present application in court.

[4] Effectively the declaration sought by the plaintiff in determining its entitlement under the joint venture agreement and the further relief sought following and consequential to the same C involves solely on the interpretation of the relevant clauses in the said agreement. In this instance it is pertinent to look at cl. 2 of the joint venture agreement dated 4 May 1996 and for ease of reference, I take the liberty to reproduce the said cl. 2 in toto. It reads as follow:

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2. Entitlement Ratio

2.1 It is hereby agreed by the parties hereto that the gross sale proceeds and any other income derived from the said Development Scheme (irrespective of whether the E development is on U-Meng's Land or Foong Seong Equipment's Land) shall be divided between the parties hereto as follows:

A. In respect of wholly residential development.

F (a) Seventy-Five per cent (75%) to the Developer; and

(b) Twenty-Five per cent (25%) to the Landowners in the following proportions:

G (i) Thirteen Point One Zero Four Two per cent (13.1042%; derived from 52.4168 x 25%) to U-Meng; and

(ii) Eleven Point Eight Nine Five Eight per cent (11.8958%); derived from 47.5832 x 25%) to Foong Seong Equipment; and

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B. In respect of all other types of development including but not limited to commercial, industrial and partly residential (for example shophouses) development,

(a) Seventy-Two per cent (72%) to the Developer; and

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(b) Twenty-Eight per cent (28%) to the Landowners in the following proportions:

(i) Fourteen Point Six Seven Six Seven per cent (14.6767%); derived from 52.4168 x 28%) to U-Meng; and

(ii) Thirteen Point Three Two Three Three per cent (13.3233%); derived from 47.5832 x 28%) to Foong Seong Equipment;

PROVIDED ALWAYS that the Landowners shall not be responsible for any loss (if any) suffered by the Developer in respect of the Development Scheme and the Developer shall keep the Landowners indemnified against any claims against the Landowners for such loss. For ease of reference, in this Agreement "Landowners Entitlement" shall mean the Twenty-Five per cent (25) set out in clause 2.1A(b) and/or the Twenty-Eight (28%) set out in clause 2.1B(b) hereof as the case may be AND "Entitlement Ratio" shall mean the percentages set out in Clause 2.1A(a) to (b) and/or clause 2.1B(a) to (b) hereof as the case may be.

2.2 The words "other income" referred to in the immediately preceding sub-clause includes all income, proceeds, gains and receipts in whatever form derived from the Development Scheme and also includes but is not limited to the income from additional works, renovations, interior design, interior and exterior decorations, and furnishing carried out by the Developer and/or persons, businesses, companies related to the Developer or the Developer's shareholders or directors prior as well as subsequent to the issue of the Occupational Certificate.

2.3 Subject to sub-clause 2.4 hereof:

2.3.1 In respect of development falling within the Housing Developments (Control and Licensing) Act 1966, the Developer shall appoint Keris Properties Sdn. Bhd of No: 31, Jalan Ali Pitchay, 30250 Ipoh, Perak as its main contractor and the Developer hereby undertakes to pay to the Landowners the Landowners' Entitlement supported by a statement of the sales and receipts within seven (7) days of receipt of payments by Keris Properties Sdn. Bhd from the Housing Development Account in respect of such development; and

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2.3.2 In respect of development not falling within the Housing Developers (Control and Licensing) Act 1966, the Landowners Entitlement shall be paid by the Developer to the Landowners in cash upon receipt of payments (progressive or otherwise) from the purchasers on a monthly basis commencing from the first sale to be paid to the Landowners on or before the tenth (10th) day of the following month supported by a statement of the sales and receipts for that month.

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2.4 U-Meng and/or Foong Seong Equipment shall be entitled to elect to have all or any part(s) of the Landowners Entitlement to be settled in kind by way of physical units.

[5] It would be noticed that I have earlier in this judgment summarized the plaintiff's entitlement pursuant to this clause. The relevant provisions for the court's consideration in determining the plaintiff's entitlement are cls. 2.1, 2.3.1 and 2.3.2.

The Law

[6] The declaration sought by the plaintiff in the instant case is that on the construction of the abovesaid cl. 2.1 of the joint venture agreement, the plaintiff is entitled to receive from the defendant all gross sale proceeds and any other income derived from the development in the ratio as stated therein. The court is tasked to interpret that clause.

[7] The powers of the court to grant a declaratory order is a discretionary one and without limit. A declaration merely declares what the legal rights of the concerned parties are, and that is precisely what the plaintiff is seeking in prayer (1) of its application in this action. Viscount Radcliffe in *Ikebife Ibeneweka & Ors v. Egbuna Peter & Anor* [1964] 1 MR 219 at p. 215 stated among others:

> ... the power of the court to make a declaration, where it is a question of defining the rights of two parties, is almost unlimited; I might say only limited by its own discretion. The discretion should of course, be exercised judicially, but it seems to me that the discretion is very wide.

[8] Speaking of the scope of O. 25 r. 5 of the Rules of the Supreme Court 1957, which is identical in terms of the old English Order XXV r. 5 and the present O. 15 r. 16 of the Rules of the High Court 1980, His Lordship Wan Sulaiman J (as he then was) in *Tengku Mariam binti Tengku Sri Wa Raja & Anor v. Commissioner for Religious Affairs Terengganu & Ors* [1969] 1 MLJ 110 at p. 112 says:

> On this point, the scope of Order 25 rule 5 is best explained by Pickford LJ in *Guaranty Trust Company New York v. Hannay & Company* [1915] 2 KB 536, thus:
>
> > I think ... that the effect of the rule is to give a general power to make a declaration whether there be a cause of action or not and at the instance of any party who is interested in the subject matter of the declaration.

[9] And further down on the same page His Lordship quoted a passage from the words of Denning LJ (as he then was) in *Barnard v. National Dock Labour Board* [1953] 2 QB 18 who said:

> I know of no limit to the power of the court to grant a declaration except such limit as it may in its discretion impose upon itself.

[10] To be entitled to such a relief the plaintiff need only show that it has an interest in the subject matter (*Tan Sri Haji Othman Saat v. Mohamad bin Ismail* [1982] 2 MLJ 177) and Abdul Hamid Omar CJ (as he then was) in setting out the principles upon which declaratory relief can be granted by the court has set out the following conditions to be satisfied in *Karpal Singh v. Sultan of Selangor* [1987] 2 CLJ 342; ([1987] CLJ (Rep) 686), wherein at pp. 345 and 346 (p. 690) it was reported:

The plaintiff has by his originating summons sought a declaration. It is fundamental principle that declaration will not be made if the application for it is embarrassing or the declarations can serve no useful purpose: (See *Mellstrom v. Gamer & Ors*) [1970] 2 All ER 9).

[11] The learned Attorney-General has referred to a textbook on *Declaratory Orders*, 2nd edn, by P.W. Young, on the conditions for declaratory orders and has submitted that one of the conditions to be satisfied is that, (a) there must exist a controversy between

A the parties; (b) the proceedings must involve a 'right'; (c) the proceedings must be brought by a person who has a proper or tangible interest in obtaining the order; (d) the controversy must be subject to the court's jurisdiction; and (e) it must not be merely of academic interest, hypothetical or one whose resolution B would be of no practical utility.

[12] "The question must be a real and not a theoretical question; the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone C presently existing who has a true interest to oppose the declaration sought." (*The Russian Commercial & Industrial Bank v. British Bank for Foreign Trade* [1921] 2 AC 438 at 448 per Lord Dunedin).

D **[13]** At this juncture, I would refer to *Cox v. Green* [1966] 1 Ch. 216 where it was held "that on its true construction, RSC, O. 15 r. 17 (O. 15 r. 16 of our RHC), was limited to an action or proceeding in which the grant of the declaration sought would not be contrary to the accepted principles on which the court E exercised its jurisdiction, one of those principles being that the court would not make a declaration in a dispute which was not a justiciable dispute."

[14] I would also refer to the case of *Lim Cho Hock v. Government of the State of Perak & Ors.* [1980] 2 MLJ 149 where the court F held that the court's power to make declaratory judgments is confined to matters justiciable in the courts, and the binding declarations which it could make under O. 15 r. 16 of the Rules of the High Court 1980 are limited to legal or equitable rights and do not extend to moral, social or political matters." (See also G s. 41 Specific Relief Act 1950).

[15] Strictly it is a discretionary relief and the discretion is to be exercised judicially consistent with accepted principles. In the exercise of its discretion the court shall have regard to the facts H and circumstances of each particular case before it decides to grant a declaration.

[16] Over and above the various legal pronouncements quoted, reference must also be made to the provisions of s. 41 of the I Specific Relief Act 1950 and O. 15 r. 16 of the Rules of the High Court 1980 on the powers of the court to issue declaratory orders.

[17] Considering the factual matrix of the case before me, it cannot be disputed that the plaintiff has an interest in the subject matter. The plaintiff is a party to the joint venture agreement. There is nothing in the present action which would dispose me to close the door to declaratory relief to the plaintiff. Unhesitatingly, I must state that the plaintiff is no stranger to the subject matter, for it is not open to any stranger to the transaction to go and ask the court to express its opinion on a subject matter in which he has no interest. The plaintiff who is under receivership is no less entitled to seek for the declaratory relief. The Receivers and Managers are court appointed and as Receivers and Managers they are empowered to take possession of, collect and get the whole or any part of the property of the plaintiff. The proceeds from the development scheme under the joint venture agreement forms part of the property of the plaintiff. Those proceeds are due and owing to the plaintiff.

[18] Construing the provisions of cls. 2.1A(b)(ii) and B (b)(ii) the joint venture agreement it is crystal clear that the plaintiff is entitled to receive from the defendant all gross sale proceeds and any other income from both the residential development as well as the non-residential development. The words in those two clauses are plain and simple and need no further explanation or elaboration. They are plain and ordinary words and has no special meaning or significance. If those words are clear, there is very little the court has to do. The court must give effect to the plain meaning of the words.

[19] Accordingly the court declares that the plaintiff is entitled in the ratios and/or percentages of all the gross sale proceeds and any other income derived from the development scheme as stated in cls. 2.1 A(b)(ii) and B(b) (ii) of the joint venture agreement. On the same token the plaintiff's claim in prayer (6) of the application is also granted in respect of their right to inspect the account books and supporting documents relating to the sale, sale proceeds and other receipts and income in respect of the development scheme as provided in cl. 18.2 of the same.

[20] It is trite that in construing the agreement, the court is bound by the principle that the whole document must be looked at and construed in its entirety. A clause in an agreement must not be read in isolation, but must be considered in the context of

A the whole of the document (*Chamber Colliery Ltd v. Twyrerould* [1893] [1915] 1 Ch 268) and all parts of it must be given effect wherever possible (*Re strand Music Hall Co. Ltd* [1865] 35 Beav 153). Muhamad Azmi FJ in *City Investment Sdn. Bhd v. Koperasi Serbaguna Cuepacs Tanggungan Bhd* [1985] 1 CLJ 131; [1985] CLJ B (Rep) 77:

> The general principle of construction of contract applies to all contracts whether they are building contracts or not and in each case the meaning of any clause in a particular contract has to be ascertained by looking at the contract as a whole and giving effect C so far as possible to every part of it (see *National Coal Board v. Wm Neill & Son (St Helens) Ltd)* Mr. Sethu has drawn our attention to p. 560, the judgment of Piers Ashworth QC which states:
>
> D The first two issues involve the construction of the contract. I bear in mind the principles of construing a contract. The relevant ones for the purpose of this case are: (1) construction of a contract is a question of law; (2) where the contract is in writing the intention of the parties must be found within the four walls of the contractual documents; it is not legitimate to have regard to E extrinsic evidence (there is, of course, no such evidence in this case); (3) a contract must be construed as at the date it was made: it is not legitimate to construe it in the light of what happened years or even days later; (4) the contract must be construed as a whole, and also, so far as practicable, to give F effect to every part of it.

(See also: *The Royal Selangor Golf Club v. Anglo-Oriental (Malaya) Sdn. Bhd* [1990] 1 CLJ 995; [1990] 3 CLJ (Rep) 37, *Hotel Anika Sdn. Bhd v. Majlis Daerah Kluang Utara* [2006] 1 LNS 130, *Walter Pathrose Gomez & Ors v. Sentral Raya Sdn. Bhd* [2007] 3 CLJ G 176).

[21] Clause 13 of the joint venture agreement makes reference to the Housing Developers (Control and Licensing) Act 1966 and requiring the developer to comply with the provisions of the said H Act in particular with matters relating to the Housing Development Account. In this respect I am in full agreement with the submissions made by the learned counsel for the defendant that under the said clause it was contemplated by the parties that in respect of the Housing Development Account, the Developer I shall comply with the provisions of the Housing Developers

(Control and Licensing) Act 1966 and the regulations made thereunder. Section 7A(5) of the said Act provides that notwithstanding the provisions of any other written law to the contrary, all monies under the Housing Development Account and all monies held by the stakeholder shall be deemed not to form part of the property of the developer. Further, reg. 7 of the Housing Development (Housing Development Account) Regulations 1991 spells out the purposes for which monies in the Housing Development Account may be withdrawn. A Housing Development Account is an account opened and maintained by a developer with a bank in respect of a housing development undertaken by the developer as provided under s. 7A(1) of the Act. Housing development in turn, refers to the construction or development of more than four units of housing accommodation. In other words it refers only to residential but does not include commercial development. As such, Housing Development Account comprises only of monies and any other income and proceeds in respect of residential development.

[22] Taking into account the abovesaid provisions, it is clearly envisaged by the parties that whatever payments due to the plaintiff as landowner arising from the sale proceeds and any other income derived from the development is subject to the restrictions under the Act and the Regulations. Therefore in my view, the plaintiff's entitlement to the payment can only be paid from the sale proceeds of any source or account other than the proceeds from the residential development. To hold otherwise it would mean that not only the provisions of cl. 13 of the joint venture agreement is flouted but it would also mean a transgression of the statutory provisions in the Act and the Regulations. It would defeat the purpose of the law and makes the contract an illegal contract. A court will not enforce a contract which is expressly or impliedly prohibited by statute. (*Keng Soon Finance Bhd v. MK Retnam Holdings Sdn. Bhd* [1996] 4 CLJ 52, *Singma Sawmill Co. Sdn. Bhd v. Asia Holdings Sdn. Bhd.* [1980] 1 MLJ 21). For that reason, the court finds that what ever entitlement that is due to the plaintiff as landowner under the joint venture agreement must only be from the sale proceeds of the non residential development. Clause 2.3.1 must be interpreted to be subject to cl. 13 of the joint venture agreement for it to have any effect. The court further rules that, on that construction, the joint venture agreement is not void under s. 24 of the Contracts Act 1950 as contended by the defendant.

[23] It is submitted by the learned counsel for the plaintiff that cl. 2.3.1 of the joint venture agreement, must be interpreted as to mean that the defendant should pay the plaintiff out of its own monies and not from the Housing Development Account. My answer to this proposition is that, this is something which is beyond the scope of the agreement and never intended by the parties. To read the said clause in that manner would in my view be putting a strain on the interpretation of that clause. It is an interpretation which is too far fetched and tantamounts to adding something into the clause which was never envisaged by the contracting parties. The court can not rewrite the agreement and will never do so.

[24] As evident from the communications, between the plaintiff and the defendant regarding their respective obligations under the joint venture agreement, it is clear that various payments has been made by the defendant. As claimed by the plaintiff, a total amount of RM2,421,681.63 has been received between the months of May and September 2003 and payment has stopped since October the same year. These payments are in respect of the joint venture agreement. The plaintiff contends that the defendant is estopped from denying that the amount so paid to the plaintiff are not the plaintiff's entitlement under the joint venture agreement. In reply, the learned counsel for the defendant submits that those payments were indeed made but they were treated as advances because the plaintiff is not yet entitled to be paid their entitlement under the joint venture agreement and further submits that the plaintiff's claim before this court is premature. No other explanation is given by the defendant as to what these so called advances are, and for what. It remains a mystery. There is nothing whatsoever in the joint venture agreement that deals with the issue of advances and/or advance payments and yet the defendant claims that those payments made to the plaintiff are advances. I find no merits in the defendant's contention. In one of its communications with the plaintiff, the defendant has, *via* a letter dated 16 September 2004 assured the plaintiff that efforts are being made with the new accountant in respect of the statement of payments and entitlements made in the past to the plaintiff company. There are other contemporaneous documents exhibited by the plaintiff in support of this periodical payments made by the defendant. In the

light of the evidence produced, I hold that the defendant is therefore estopped from denying that the plaintiff has in fact been paid its entitlement under the joint venture agreement. The court recognizes that the doctrine of estoppel is a flexible principle by which justice is done according to the circumstances of the case. It is a doctrine of wide utility and has been resorted to in varying fact patterns to achieve justice. Indeed, the circumstances in which the doctrine may operate are endless. (*Boustead Trading (1985) Sdn. Bhd v. Arab Malaysian Merchant Bank Bhd* [1995] 4 CLJ 283 per Gopal Sri Ram JCA). As stated by Lord Russell of Killoween in *Dawsons Bank v. Nippon Menkwa Kabushiki Kaisha* LR 62 1A 100 at p. 108:

> Estoppel is not a cause of action. It may (if established) assist a plaintiff in enforcing a cause of action by preventing a defendant from denying the existence of some fact essential to establish the cause of action or (to put it in another way) by preventing a defendant from asserting the existence of some fact the existence of which would destroy the cause of action.

[25] Besides seeking a declaratory order on its entitlement under the joint venture agreement, the plaintiff is also seeking other consequential reliefs as prayed in prayers (2) (3) (4) (5) and (6) of encl. 1. These consequential reliefs merely details out the obligations of the defendant under the joint venture agreement requiring the defendant to comply with the provisions of the agreement relating to the entitlement of the plaintiff towards the supply of account of payments made to the plaintiff, statement of the sales and receipts and also the payment of all monies due to the plaintiff from the sale proceeds and any other income derived from the development scheme. In my judgment, the plaintiff is entitled to all these consequential reliefs. In term of the plaintiff's application in encl. I, the order of this court is as follows:

(a) prayer (1) is granted in terms of the application;

(b) prayers (2) and (3) are granted in terms of the application and by consent and on the agreement of both parties, the time limit for compliance with these prayers is within a period of four months;

A (c) prayers (4) and (5) are granted in terms of the application only in respect of monies and sale proceeds and any other income in respect of non-residential development from the Development Scheme.

B (d) prayer (6) is granted in terms of the application;

(e) interest is allowed at 8% per annum on all monies due to the plaintiff from the date of such monies becoming due and payable until realization, and

C (f) costs be awarded to the plaintiff.

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